

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

Attorneys for Plaintiff Smith, the Class, and Aggrieved Employees

[Additional counsel information on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

PHUOC TRUONG, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 et seq.,

Plaintiff,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. 20CV365250
Consolidated with Case No. 20CV362069

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1]

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: May 26, 2021

TIME: 1:30 P.M.

DEPT.: 1

Complaint filed: March 18, 2020
Trial Date: None

1 William L. Marder (State Bar No. 170131)

2 **POLARIS LAW GROUP, LLP**

3 501 San Benito Street, Suite 200

4 Hollister, California 95023

5 (831) 531-4214

6 (831) 634-0333 facsimile

7 bill@polarislawgroup.com

8 Attorneys for Plaintiff Smith, the Class, and Aggrieved Employees

9 Daniel F. Gaines, SBN 251488

10 daniel@gaineslawfirm.com

11 Alex P. Katofsky, SBN 202754

12 alex@gaineslawfirm.com

13 **GAINES & GAINES, APLC**

14 4550 East Thousand Oaks Blvd., Suite 100

15 Westlake Village, CA 91362

16 Telephone: (818) 703-8985

17 Facsimile: (818) 703-8984

18 Attorneys for Plaintiff Truong and Aggrieved Employees

1 **PLEASE TAKE NOTICE THAT** on May 26, 2022 at 1:30 P.M., or as soon thereafter as
2 the matter may be heard, in Department 1 of the above-entitled Court, located at 191 North First
3 Street, San Jose, California 95113, the Honorable Sunil R. Kulkarni presiding, Plaintiffs Phuoc
4 Truong and Clarence Smith will and hereby do move for an Order granting final approval of this
5 class action settlement. This application is made pursuant to California Rules of Court Rule
6 3.769, which requires court approval of the settlement of class actions. This Motion will be based
7 on the Memorandum of Points and Authorities, the Amended Joint Stipulation of Class Action
8 and PAGA Settlement and Release, the Declarations of Larry W. Lee, Mai Tulyathan, Daniel F.
9 Gaines and Alex P. Katofsky, the Declaration of Jarrod Salinas of Phoenix Settlement
10 Administrators, the Declarations of Plaintiffs Phuoc Truong and Clarence Smith, such evidence
11 or oral argument as may be presented at the hearing, and on the complete records and file herein.¹

12 Dated: May 4, 2022

Respectfully Submitted,

DIVERSITY LAW GROUP, P.C.

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16 By: 

Larry W. Lee, Esq.

Mai Tulyathan, Esq.

Attorneys for Plaintiffs

and Proposed Class Counsel

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¹ This motion should not be construed as a waiver of any attorney-client or attorney work-product privileges.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	5
II. STATEMENT OF FACTS.....	6
A. Background and Procedural History	6
B. The Underlying Allegations.....	6
C. Investigation and Settlement Discussions	7
D. Summary of Settlement Terms	9
1. Benefits to the Class and the Public	9
2. The Settlement Class.....	9
3. Allocations to be Paid from the Total Settlement Amount	10
E. Preliminary Approval, Notice, and the Claims Process	11
III. ARGUMENT	12
A. The Class Members Received the Best Practicable Notice	12
B. Final Settlement Approval is Appropriate	14
1. The Three-Step Settlement Approval Process.....	14
2. The Terms of the Settlement Disclose No Grounds to Doubt Its Fairness	16
3. Each of the Relevant Criteria Supports Final Approval of the Settlement.....	16
a. The Value of the Settlement Favors Final Approval	17
b. The Risks Inherent in Continued Litigation Are Substantial	21
c. Plaintiffs Believe That They Would Have Succeeded In Proving Class Certification Was Proper Yet A Risk Of Non-Certification Is Always Present	21
i. The Proposed Class is Ascertainable.....	22
ii. Numerosity is Satisfied	22
iii. Common Issues of Law and Fact May Predominate.....	23
iv. The Proposed Class Representatives' Claims are Typical of the Class' Claims.....	24
v. Class Treatment is the Superior Method of Adjudicating the Claims Asserted in this Case	25
d. Disclosure of Documents and Data Demonstrating the Strengths and Weaknesses of this Action Was Completed Prior to Entering into the Settlement	26
e. The Complexity, Expense, and Likely Duration of Continued Litigation Militate in Favor of Final Approval	26

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2
3
4
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8
9
10
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28

f.	The Experience and Views of Counsel Favor Final Approval	27
g.	Class Members' Positive Reaction to the Settlement Favors Final Approval.....	28
C.	Court Approval of the PAGA Penalty Portion of the Settlement.....	28
IV.	CONCLUSION.....	29

TABLE OF AUTHORITIES

Page(s)

STATE CASES

<i>Carrington v. Starbucks Corp.</i> , (2018) 30 Cal. App. 5th 504.....	18
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960, 973-74.....	12, 13
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 47.....	24
<i>Dunk v. Ford Motor Company</i> (1996) 48 Cal.App.4th 1794, 1801.....	passim
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	19
<i>Employment Development Dept. v. Superior Court</i> (1981) 30 Cal.3d 256, 266.....	22
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126, 145-146.....	14
<i>Keller v. Tuesday Morning, Inc.</i> (2009) 179 Cal. App. 4th 1389	21
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 129-30.....	5, 16
<i>Lazar v. Hertz Corp.</i> (1983) 143 Cal.App.3d 128, 138	22
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429, 435	22
<i>Maldonado v. Epsilon Plastics, Inc.</i> (May 8, 2018) 22 Cal. App. 5th 1308, 1336-37.....	21
<i>Mullane v. Central Hanover Bank & Garretson Company</i> (1950) 339 U.S. 306, 314.....	12
<i>Occidental Land v. Superior Court</i> (1976) 18 Cal.3d 355, 363-64	24
<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797, 811-12	12
<i>Potter v. Pacific Coast Lumber Co.</i> (1951) 37 Cal.2d 592, 602.....	14
<i>Prince v. CLS Transp., Inc.</i> (2004) 118 Cal.App.4th 1320, 1328.....	25
<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462, 470.....	22, 24
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926, 932	22
<i>Sav-On Drug Stores v. Superior Court</i> (2004) 34 Cal.4th 319, 327.....	23, 24, 25
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800, 821	14, 22
<i>Washington Mutual Bank, FA v. Superior Court</i> (2001) 24 Cal.4th 906, 922.....	24
<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224, 234-35.....	15, 16, 17

FEDERAL CASES

<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015)	20
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268, 1276	14
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156, 174-76	12
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15, 18	27
<i>German v. Federal Home Loan Mortgage Corp.</i> (S.D.N.Y. 1995) 885 F. Supp. 537, 552.....	22
<i>In re Mego Fin. Corp. Secs. Litig.</i> (9th Cir. 2000) 213 F.3d 454, 459	20
<i>In re Wash. Pub. Power Supply System Sec. Litig.</i> (D. Ariz. 1989) 720 F. Supp. 1379, 1394.....	28

1	<i>Officers for Justice v. Civil Service Com'n of City and County of San Francisco</i>	27
2	(9th Cir. 1982) 688 F.2d 615, 625.....	
3	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i>	12
4	(E.D. Pa. 1970) 323 F. Supp. 364, 378	
5	<i>Reed v. General Motors</i> (5th Cir. 1983) 703 F.2d 170, 174	28
6	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D.	
7	Cal. 2014).....	20
8	<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943, 950	14
9	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL	
10	5878390, at *6 (N.D. Cal. Nov. 21, 2012).....	20
11	<i>Young v. Katz</i> (5th Cir. 1971) 447 F.2d 431, 433	27
12	STATUTES	
13	C.C.P. § 382	15, 16, 21, 22
14	California Civil Code § 1781	12
15	Labor Code § 225.5.....	6
16	Labor Code § 226(a)	6
17	Labor Code § 226(a)(2).....	7
18	Labor Code § 226(a)(9).....	7
19	Labor Code § 226.3.....	6
20	Labor Code § 226.7.....	6
21	Labor Code § 2698 <i>et. seq.</i>	passim
22	Labor Code § 2699.....	6
23	Labor Code § 2699(e)(2).....	18
24	Labor Code § 2699(i)	10
25	Labor Code § 2699(l)(2)	12
26	Labor Code § 512.....	6
27	Labor Code §§ 201-203	7
28	Labor Code § 212.....	6, 7, 19
	Labor Code § 2699(l).....	28
	Labor Code § 2699(i) and (j)	14
	OTHER AUTHORITIES	
	4 <i>Newberg on Class Actions</i> 4th (4th e ^d . 2002) § 11.41	14, 15
	Fair Labor Standards Act	8
	<i>Manual for Complex Litigation</i> , Fourth (4th e ^d . 2004) ("Manual") §21.632, <i>et seq.</i>	14, 15
	RULES	
	California Rules of Court Rule 3.769	14
	Federal Rules of Civil Procedure, Rule 23(e)	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this motion, Plaintiffs Phuoc Truong (“Truong”) and Clarence Smith (“Smith”)
4 (collectively, “Plaintiffs”) and the settlement class (collectively “Class Members” or “Class”)
5 seek final approval of the class action settlement reached with Defendant Watlow Electric
6 Manufacturing Company (“Defendant”). Subject to Court approval, Plaintiffs have settled the
7 Released Claims of the Class Members as defined in the Amended Joint Stipulation of Class
8 Action and PAGA Settlement and Release (the “Settlement Agreement”, “Stipulation”, or
9 “Stip.”) for a settlement package worth \$500,000. See Declaration of Mai Tulyathan (“Tulyathan
10 Decl.”), **Exhibit (“Ex.”) A**.

11 As discussed herein, the proposed Settlement satisfies all of the criteria for final
12 settlement approval under California law because it is fair, adequate, and reasonable. Ex. A; see
13 also, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor*
14 *Company* (1996) 48 Cal.App.4th 1794, 1801. Since the notice of the Settlement was mailed to all
15 79 Class Members, one (1) Class Member has requested exclusion from the Settlement, and no
16 Class Members have submitted an objection. Declaration of Jarrod Salinas of Phoenix Settlement
17 Administrators (“PSA”) (“Salinas Decl.”) ¶¶ 3-9.

18 Based on the current claims information, the 78 participating Settlement Class Members
19 will receive, on average, net payments of approximately \$2,850.59 each. Salinas Decl. at ¶ 12.
20 The highest settlement share to be paid to participating Settlement Class Members is
21 approximately \$5,610.04. *Id.* The Labor and Workforce Development Agency (“LWDA”) shall
22 be paid \$60,000, which is 75% of the \$80,000 total allocated to settle the claims brought pursuant
23 to Labor Code § 2698 *et. seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the
24 remaining 25%, or \$20,000, will be distributed to Settlement Class Members as part of the Net
25 Settlement Amount. Settlement at ¶ 13.

26 Because the Settlement achieves outstanding results as it provides significant recovery to
27 each Settlement Class Member, Defendant’s past and current employees, and the State of
28

1 California, Plaintiffs respectfully request, on behalf of the Class and without opposition from
2 Defendant, that the Court enter the Proposed Order approving the Settlement as fair, adequate,
3 and reasonable.²

4 **II. STATEMENT OF FACTS**

5 **A. Background and Procedural History**

6 On February 24, 2020, Plaintiff Smith filed his written notice with the LWDA, alleging
7 violations of Labor Code § 226(a) against Defendant, pursuant to the PAGA, Labor Code § 2699.
8 Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 2. Thereafter, on March 18, 2020,
9 Plaintiff Smith filed his class and representative PAGA complaint against Defendant in Santa
10 Clara County Superior Court. (*Id.*) The *Smith* complaint alleges causes of action for: (1)
11 violation of Labor Code § 226(a), and (2) violation of the PAGA, Labor Code § 2698, *et seq. Id.*

12 On October 31, 2019, Plaintiff Truong filed his written PAGA notice with the LWDA,
13 alleging violations of Labor Code §§ 212, 225.5, 226(a), 226.3, 226.7, and 512. Declaration of
14 Daniel F. Gaines (“Gaines Decl.”) at ¶ 8. Plaintiff Truong filed his complaint against Defendant
15 in the Santa Clara County Superior Court on January 17, 2020. *Id.* The *Truong* complaint was
16 filed as a representative PAGA complaint seeking penalties for violations of Labor Code §§
17 225.5, 226(a), 226.3, 212, 226.7, and 512. *Id.*

18 The *Smith* and *Truong* actions have since been consolidated in the Santa Clara County
19 Superior Court pursuant to a joint stipulation between the Parties. Tulyathan Decl. at ¶ 3. On
20 June 8, 2021, Plaintiffs filed the operative First Amended Consolidated Class and Representative
21 Action Complaint (“FAC”) in this Court. *Id.*

22 **B. The Underlying Allegations**

23 Plaintiffs’ class and PAGA claims as pled in this consolidated lawsuit are predicated upon
24 the following allegations. With respect to Plaintiffs’ meal and rest period claims, Plaintiffs allege
25 that Defendant failed to provide proper off-duty meal and rest breaks to Plaintiffs and other non-
26 exempt employees. Plaintiffs also allege that Defendant failed to pay premium compensation to

27
28 ² Plaintiffs are filing a separate application for the Court’s approval of Class Counsel’s attorneys’
fees and costs, claims administration fees, and Plaintiffs’ Enhancement Payments.

1 Plaintiffs and other employees in lieu of the noncompliant meal and rest breaks.

2 With respect Plaintiffs' Labor Code § 212 claim, Plaintiffs allege that Defendant failed to
3 pay wages to Plaintiffs and employees in a form that was negotiable and payable in cash, without
4 discount, at an established place of business in California. In this regard, Plaintiffs and
5 employees received paychecks drawn from a bank without California locations and could not be
6 cashed in California without incurring fees. As a result, Plaintiffs and employees were allegedly
7 forced to incur various fees to access their wages and therefore were not provided with all earned
8 wages upon separation of employment.

9 With respect to Plaintiffs' wage statement claims, Plaintiffs contend that Defendant issued
10 deficient wage statements that failed to identify the gross wages earned, net wages earned, and
11 premium pay for missed meal and rest breaks. Additionally, Plaintiffs also allege that whenever
12 overtime wages were paid, the wage statements issued to Plaintiffs and other employees failed to
13 accurately state the overtime rates of pay, in violation of Labor Code § 226(a)(9), and failed to
14 accurately state the correct total hours worked during the pay period, in violation of Labor Code §
15 226(a)(2).

16 As to Plaintiffs' claim pursuant to Labor Code §§ 201-203, Plaintiffs allege on a
17 derivative basis that Plaintiffs and other employees were denied the timely payment of wages at
18 the separation of their employment, based on the failures to pay all wages as detailed above.

19 As a result of the alleged violations, Plaintiff seeks wages, statutory penalties, and civil
20 penalties under the California Labor Code and the PAGA, restitution under California's Unfair
21 Competition Law, as well as attorneys' fees and costs and other forms of relief. Tulyathan Decl.
22 at ¶¶ 4-8.

23 **C. Investigation and Settlement Discussions**

24 After the initial Case Management Conference held on July 24, 2020, the Parties agreed to
25 participate in private mediation. Tulyathan Decl. at ¶ 9. In connection with mediation, the
26 Parties engaged in informal discovery to allow Plaintiffs to assess the claims and liability, as well
27 as analyze the maximum exposure of damages and penalties. *Id.* Defendant provided Plaintiffs'
28 counsel with informal data and information pertaining to the number of putative class members,

1 the number of shifts at issue, the number of pay periods at issue, the number of wage statements
2 and paychecks at issue, the hourly rates of pay for class members, as well as information
3 pertaining to Defendant's various wage and hour policies and practices. *Id.* The information
4 provided by Defendant allowed Plaintiffs to review and analyze the liability and potential
5 exposure. *Id.*

6 On January 19, 2021, the Parties engaged in a full-day mediation with mediator Steven
7 Rottman, Esq. Tulyathan Decl. at ¶ 10. After thorough investigation and evaluation of the facts
8 and claims, and as a result of the arm's-length negotiations facilitated by Mr. Rottman, the Parties
9 and their counsel ultimately reached the current settlement. (*Id.*) In resolution of Plaintiffs' class
10 and PAGA claims, the Parties entered into the Joint Stipulation of Class Action and PAGA
11 Settlement and Release. *Id.*

12 On August 17, 2021, Plaintiffs filed their Motion for Preliminary Approval of Class
13 Action Settlement as a "hybrid" class action settlement and settlement under the federal Fair
14 Labor Standards Act (FLSA) at the time. Tulyathan Decl. at ¶ 11. The Court initially denied
15 preliminary approval, as it had concerns with approving such a hybrid FLSA/class action
16 settlement at the time. *Id.* The Court directed the Parties to revise the FLSA component of the
17 settlement as well as meet and confer on other issues pertaining to the settlement. *Id.* In
18 connection with addressing the issues identified by the Court, the Parties executed an Amended
19 Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement
20 Agreement", "Stipulation", or "Stip.") to remove the FLSA component. *Id.* The Settlement
21 Agreement is attached as Exhibit A to the Declaration of Mai Tulyathan.

22 On December 27, 2021, Plaintiffs filed their Renewed Motion for Preliminary Approval
23 of Class Action Settlement. On January 25, 2022, the Court granted preliminary approval of this
24 settlement. Tulyathan Decl. at ¶ 12, Ex. B.

25 The Parties recognize the risk, expense, and delay in continuing litigation with the class
26 and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. Gaines Decl.
27 at ¶¶ 10-11; Tulyathan Decl. at ¶ 13. Accordingly, the Parties desire to settle, compromise, and
28 discharge all disputes and claims arising from or relating to the class and PAGA claims as set

1 forth in the Settlement Agreement.

2 **D. Summary of Settlement Terms**

3 **1. Benefits to the Class and the Public**

4 The Settlement provides that (a) the Court may certify the Settlement Class as described
5 in the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,
6 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
7 \$500,000 (the “Total Settlement Amount”), which includes: all Attorneys’ Fees and Costs,
8 Enhancement Payments to Plaintiffs, LWDA Payment, Net Settlement Amount to be paid to the
9 Settlement Class Members (which includes the Settlement Class Members’ portion of the PAGA
10 Payment), and Settlement Administration Costs. No portion of the Total Settlement Amount shall
11 revert to Defendant. The employer’s share of taxes on the wages portion of Individual Settlement
12 Shares will be paid separately and in addition to the Total Settlement Amount. Defendant shall
13 not be required to pay, under any circumstances, any amount in excess of the Total Settlement
14 Amount. All amounts to be paid by Defendant shall be paid to a Qualified Settlement Account to
15 be established by the Settlement Administrator. Settlement at ¶ dd.

16 **2. The Settlement Class**

17 The Court has preliminarily certified the following Settlement Class for settlement
18 purposes: all current and former hourly-paid or non-exempt employees, who worked for
19 Defendant in California at any time during the Class Period [(November 15, 2018, through the
20 date of Preliminary Approval)], and who received at least one paycheck during the Class Period
21 from Defendant. Tulyathan Decl. at ¶ 12, Ex. B; Settlement at ¶ d. The final settlement class
22 includes 79 members.³ Salinas Decl. at ¶¶ 3, 8.

23
24
25 ³ As explained by the Settlement Administrator, the Settlement Administrator received a Class
26 List from Defendant that contained 121 Class Members. After the Settlement Administrator
27 mailed the Class Notice to all 121 individuals, it was discovered that 42 individuals who are/were
28 exempt employees were inadvertently included in the Class List. Said 42 individuals should not
have been included on the Class List as they are exempt employees and do not belong in the
Settlement Class during the Class Period. As such, the Settlement Administrator removed the 42
exempt individuals from the Class List, and thus reducing the final Settlement Class count to 79
members. See Salinas Decl. at ¶¶ 3-6.

1 **3. Allocations to be Paid from the Total Settlement Amount**

2 The Stipulation provides that Plaintiffs’ counsel may request an award of attorneys’ fees
3 not to exceed 35% of the Total Settlement Amount (\$175,000) and litigation costs not to exceed
4 \$25,000. Stip. at ¶ 10. It also provides that Plaintiffs will seek, and Defendant will not oppose,
5 Enhancement Payments to named Plaintiffs Phuoc Truong and Clarence Smith not to exceed
6 \$10,000 to each Plaintiff, for their service in the Action and in exchange for providing a general
7 release of all claims. Settlement at ¶¶ 11, 31.

8 The Parties have agreed that Phoenix Settlement Administrators (“PSA”), an experienced
9 and competent claims administration company, will administer the settlement. The
10 administration expenses shall not exceed \$6,500, which has been allocated to compensate PSA
11 for its work related to the administration. Settlement at ¶ 12.

12 From the Total Settlement Amount, \$60,000 shall be paid to the LWDA as its 75% share
13 of PAGA penalties and the remaining portion of the PAGA Settlement Amount (the Net PAGA
14 Settlement Amount of \$20,000) will be distributed to Settlement Class Members as part of the
15 Net Settlement Amount. Stipulation at ¶ 13; *Labor Code* § 2699(i).

16 The Net Settlement Amount means the portion of the Total Settlement Amount that is
17 available for distribution to Settlement Class Members, which is the Total Settlement Amount
18 less the Court-approved Enhancement Payments to Plaintiffs, Settlement Administration Costs,
19 LWDA Payment, and Attorneys’ Fees and Costs. Settlement at ¶ r. This amount is estimated at
20 approximately \$225,196.35 (i.e., the Total Settlement Amount of \$500,000, minus the PAGA
21 Settlement Amount to be distributed to the LWDA of \$60,000.00, proposed Attorneys’ Fees in
22 the amount of \$175,000 and Costs to Plaintiffs’ Counsel in the amount of \$13,303.65, Plaintiffs’
23 Enhancement Payments not to exceed \$10,000 each, and Settlement Administration Costs not to
24 exceed \$6,500). Salinas Decl. at ¶ 12.

25 The Individual Settlement Payment means the net payment of each Settlement Class
26 Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
27 withholdings with respect to the wages portion of the Individual Settlement Share. Settlement at
28 ¶ o. Each Individual Settlement Share will be allocated as follows: 25% as wages and 75% as

1 penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an
2 IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS
3 Form-1099 by the Settlement Administrator. The Settlement Administrator will withhold the
4 employee's share of taxes and withholdings with respect to the wages portion of the Individual
5 Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement
6 Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).
7 The employer's share of taxes and contributions on the wages portion of Individual Settlement
8 Shares will be paid separately and in addition to the Total Settlement Amount. Settlement at ¶
9 25.

10 **E. Preliminary Approval, Notice, and the Claims Process**

11 By Order dated January 25, 2022, this Court granted Plaintiffs' motion for preliminary
12 approval of the Settlement and provisionally certified the Settlement Class, finding that the
13 Settlement appeared to be within the range of reasonableness of settlements that could ultimately
14 be given final approval. *See* Tulyathan Decl. at ¶ 12, Ex. B. The Court also approved the
15 distribution of the Notice. *Id.*

16 Pursuant to the Court's Preliminary Approval Order, on February 18, 2022, PSA mailed
17 Notice packets containing the notice of the terms of the Settlement — including the terms relating
18 to attorneys' fees and costs — to 121 individuals. Salinas Decl. at ¶ 5, Salinas Decl., Ex. A. As
19 explained by the Settlement Administrator, the Settlement Administrator received a Class List
20 from Defendant that contained the names and information of 121 individuals. After the
21 Settlement Administrator mailed the Class Notice to all 121 individuals, it was discovered that 42
22 individuals who are/were exempt employees were inadvertently included in the Class List. Said
23 42 individuals should not have been included on the Class List as they are exempt employees and
24 do not belong in the Settlement Class during the Class Period. As such, the Settlement
25 Administrator removed the 42 exempt individuals from the Class List, and thus reducing the final
26 Settlement Class count to 79 members. *See* Salinas Decl. at ¶¶ 3-6.

27 The Notice packet was mailed to all 79 Class Members in both English and Spanish. *Id.*
28 Class Members were given 45 days after the Notice was mailed to participate in or opt out of the

1 Settlement. Salinas Decl. at ¶ 5; Salinas Decl., Ex. A. Class Members were given 45 days after
2 the Notice was mailed to object to the Settlement. *Id.* As of the date of this motion, one (1) Class
3 Member has opted out, and zero Class Members have submitted an objection to the Settlement.
4 *Id.* at ¶¶ 8, 9. In other words, the settlement has a significantly high participation rate of **99.17%**
5 which further supports that the settlement is fair and reasonable. Tulyathan Decl. at ¶ 14.

6 **F. Compliance with Procedural Requirements of PAGA**

7 On May 3, 2022, in compliance with Labor Code § 2699(1)(2), my office submitted a
8 copy of the Settlement Agreement to the LWDA through its online submission interface. The
9 LWDA has not objected or otherwise responded to the submission. Tulyathan Decl. at ¶ 29;
10 Ex. E.

11 **III. ARGUMENT**

12 **A. The Class Members Received the Best Practicable Notice**

13 California law vests the Court with broad discretion in fashioning an appropriate notice
14 program. *See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
15 973-74. To protect the rights of absent class members, the parties must provide class members
16 with the best notice practicable of a potential class action settlement. *Phillips Petroleum Co. v.*
17 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76
18 (individual notice must be sent to all class members who can be identified through reasonable
19 efforts); *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314
20 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
21 apprise interested parties of the pendency of the action and afford them an opportunity to present
22 their objections”). The content and method of the notice should be designed to apprise the class
23 members of the terms of the proposed settlement and of the class members’ rights regarding the
24 settlement. *See Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American*
25 *Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378.

26 The Notice approved by the Court met these requirements: it identified the Parties and
27 described the lawsuit, the Class, the settlement amount, the proposed method for distribution of
28 the Total Settlement Amount, the amount proposed to be paid as a service payment to the named

1 Plaintiffs, and the requested amount for attorneys' fees and costs. *See* Salinas Decl., Ex. A. The
2 Notice described the proposed Settlement with enough specificity to allow each Class Member to
3 make an informed choice whether to accept and participate in it. It also explained how and when
4 Class Members may object to or opt out of the Settlement. Finally, the Notice provided the
5 schedule for the hearing on final approval of the Settlement and informed Class Members how to
6 obtain additional information about the Settlement.

7 The California Supreme Court has held that notice is appropriate if it has a "reasonable
8 chance of reaching a substantial percentage of the class members ..." *Cartt, supra*, 50 Cal.App.3d
9 at 974. Here, the notice procedures as delineated in the Court's Preliminary Approval Order have
10 been followed. Notice was mailed to each individual Class Member at that Class Member's last
11 known address, and in the end, 100% of the Notices were successfully mailed to all 79 Class
12 Members. *See* Salinas Decl. at ¶¶ 4-7. On February 18, 2022, the Settlement Administrator
13 received a class mailing list from Defendant that included 121 Class Members. Salinas Decl. at ¶
14 3. Prior to mailing the Class Notice, the Settlement Administrator conducted a National Change
15 of Address (NCOA) search to correct and/or update the class list in case of address changes. *Id.*
16 at ¶ 4. On February 18, 2022, the Settlement Administrator mailed the Class Notice to all 121
17 individuals on the mailing list via U.S. first class mail. *Id.* at ¶ 5. After the mailing of the
18 Notices, it was discovered that 42 individuals who are/were exempt employees were
19 inadvertently included in the Class List. *Id.* at ¶ 6. Said 42 individuals should not have been
20 included on the Class List as they are exempt employees and do not belong in the Settlement
21 Class during the Class Period. As such, the Settlement Administrator removed the 42 exempt
22 individuals from the Class List, and thus reducing the final Settlement Class count to 79
23 members. Salinas Decl. at ¶ 6. As of the date of this filing, **zero** Class Notices have been
24 returned to the Settlement Administrator and **zero** Class Notices remain undeliverable. *Id.* at ¶¶
25 7-8.

26 As the Notice was actually received by all 79 Class Members and apprised them of all
27 pertinent information regarding the Settlement, under California law, the Notice given to Class
28 Members was more than adequate.

1 **B. Final Settlement Approval is Appropriate**

2 The Settlement is fair, adequate, and reasonable because it provides substantial benefits to
3 Class Members and the general public. The fairness, adequacy, and reasonableness of the
4 Settlement are illustrated by the fact that not one of the 79 Class Members objected to, and only
5 one (1) Class Member requested exclusion from, the Settlement. Salinas Decl. at ¶¶ 8, 9. As
6 stated above, this settlement has a high participate rate by Class Members of **99.17%**, which
7 further supports that the settlement is fair and reasonable. Tulyathan Decl. at ¶ 14.

8 In addition, the State of California will receive \$60,000 for education and enforcement
9 purposes pursuant to Labor Code Sections 2699(i) and (j). Under the legal standards used by
10 California courts to determine whether class action settlements should be approved, this
11 Settlement warrants approval.

12 **1. The Three-Step Settlement Approval Process**

13 The law favors settlement, particularly in class actions and other complex cases where
14 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
15 *See 4 Newberg on Class Actions* 4th (4th e^d. 2002) § 11.41 (and cases cited therein); *Class*
16 *Plaintiffs v. City of Seattle* (9th C^{ir}. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.*
17 (9th C^{ir}. 1976) 529 F.2d 943, 950; *see also, Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d
18 592, 602. These concerns apply with particular force in a case such as this, where novel issues of
19 law are at play.

20 A class action, however, may not be dismissed, compromised, or settled without the
21 approval of the court. California Rules of Court Rule 3.769; Federal Rules of Civil Procedure,
22 Rule 23(e).⁴ Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a
23 defined procedure and specific criteria for settlement approval in class action settlements,
24 described in the Federal Judicial Center, *Manual for Complex Litigation*, Fourth (4th e^d. 2004)
25 ("Manual") §21.632, *et seq.* The *Manual's* settlement approval procedure describes three distinct

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27 ⁴ The California Supreme Court has authorized California's trial courts to use Federal Rule 23
28 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*
 (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate,
 therefore, Plaintiffs cites Federal Rule 23 and federal case law in addition to California law.

1 steps:

- 2 (1) Preliminary approval of the proposed settlement at an informal hearing;
- 3 (2) Dissemination of mailed and/or published notice of the settlement to all affected
- 4 Class members; and
- 5 (3) A “formal fairness hearing,” or final settlement approval hearing, at which Class
- 6 members may be heard regarding the settlement, and at which evidence and
- 7 argument concerning the fairness, adequacy, and reasonableness of the settlement
- 8 may be presented.

9 *Manual*, § 21.632-34.

10 The first two steps of this process are now complete. The first step was completed on
11 January 25, 2022, when this Court granted preliminary approval of the Settlement. **Exhibit C**. In
12 doing so, the Court determined that the Settlement was within the range of possible final approval
13 and that notice to the Class Members of the Settlement’s terms and of the scheduling of the
14 formal fairness hearing should be distributed. *See Wershba v. Apple Computer* (2001) 91
15 Cal.App.4th 224, 234-35; 4 *Newberg*, *supra*, § 11.25.

16 The second step in the class action settlement approval process, the dissemination of the
17 Notice, is complete as well. In accordance with the Court’s Preliminary Approval Order, the
18 Parties worked with PSA to implement the Court-approved notice program, which employed the
19 best practicable means to disseminate to all Class Members notices of the Settlement’s terms and
20 of the date and time of the final approval hearing. *C.C.P.* § 382; *see also*, Ex.A to Salinas Decl.;
21 *see generally*, Salinas Declaration.

22 The third and last step in the class action settlement approval process is the final approval
23 hearing at which the Court shall determine whether the Settlement is fair, adequate, and
24 reasonable. At the final approval hearing, scheduled for May 26, 2022, Class Members will have
25 the opportunity to be heard regarding the Settlement, and Class Counsel will present evidence
26 and argument in support of the Settlement. *See Manual*, § 21.634. At the conclusion of the final
27 approval hearing, this Court will decide whether to grant final approval of the Settlement and
28 whether to enter a final order and enter judgment in accordance with the settlement.

2. The Terms of the Settlement Disclose No Grounds to Doubt Its Fairness

When faced with a motion for final approval of a class action settlement under Code of Civil Procedure § 382, a court inquires whether the settlement is “fair, adequate, and reasonable.” *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801. A preliminary review of the terms of the proposed Settlement shows that it is fair. Indeed, this Court should begin its analysis with a presumption that the proposed Settlement is fair:

[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

Dunk, supra, 48 Cal.App.4th at 1802; *Wershba, supra*, 91 Cal.App.4th at 245.

During the course of this litigation, the Parties have engaged in significant investigation into the factual and legal claims presented in the complaint. Substantial discovery into the merits of Plaintiffs' claims and the nature of Defendant's employment practices took place between the Parties in which Defendant and Plaintiffs exchanged a considerable amount of information and documentation and further apprised each other of their respective factual contentions, legal theories, and defenses. In short, the Parties have engaged in extensive good faith, arms-length negotiations, telephone conferences, and correspondence further aimed at settling their disputes. Tulyathan Decl. at ¶ 15.

The Settlement reached by the Parties provides substantial payments to Class Members, particularly in relation to the harm alleged. The presumption of fairness and adequacy is especially appropriate here because the reaction of Class Members has been uniformly positive. Accordingly, because the four circumstances identified in *Dunk* are present here, it is appropriate for the Court to presume that the Settlement is worthy of final approval. *See Dunk, supra*, 48 Cal.App.4th at 1802; *see also, Kullar, supra*, 168 Cal.App.4th at 129-30.

3. Each of the Relevant Criteria Supports Final Approval of the Settlement

In deciding whether to grant final approval to a class action settlement, California courts consider several factors, including the following: (1) the value of the settlement; (2) the risks

1 inherent in continued litigation; (3) the extent of discovery completed and the stage of the
2 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of the
3 litigation in the absence of settlement; (5) the experience and views of class counsel; and (6) the
4 reaction of class members. *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48
5 Cal.App.4th at 1801. As described below, each of these criteria supports final approval of the
6 Settlement.

7 **a. The Value of the Settlement Favors Final Approval**

8 Under the Settlement, Defendant has agreed to a settlement package valued at \$500,000
9 (including attorneys' fees and costs) to settle this action. This Settlement provides for substantial
10 benefits in terms of a cash settlement to be paid not long after the commencement of the
11 litigation. The Settlement is enhanced by the fact that Class Members do not need to submit
12 claims to participate in the Settlement, and there are no non-cash benefits to the settlement such
13 as paid time off or coupons. The amounts are commensurate with the value of the claims
14 adjusted for risk; the amounts to be paid are not nominal or symbolic. Based on the data
15 provided by Defendant and the one opt-out received, Class Members shall be paid, on average,
16 about \$2,850.59 each – a substantial portion of their alleged actual damages. Salinas Decl. at ¶
17 12. The highest individual settlement payment to be paid to Class Members is approximately
18 \$5,610.04. *Id.* This is an exceptional result.

19 Prior to settlement, Plaintiffs' counsel created a comprehensive damage analysis using
20 sampling information obtained through informal discovery. This damage analysis reveals that the
21 negotiated settlement falls within a realistic range of recovery on Settlement Class Members'
22 claims. Tulyathan Decl. at ¶ 16.

23 Plaintiffs have already discussed, at preliminary approval, the potential damages to be
24 recovered if Plaintiffs were to succeed at trial as well as the risks and defenses raised by
25 Defendant relative to settlement. Plaintiffs provide this same analysis for the Court's
26 consideration for final approval here. Based on the data provided by Defendant, Plaintiffs
27 estimated that Defendant would face potential liability of up to approximately \$2,860,418.56 for
28 Plaintiffs' class claims if Plaintiffs succeeded at trial. See Declaration of Mai Tulyathan in

1 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement filed on
2 August 17, 2021 (“Tulyathan MPA Decl.”) at ¶ 14. This amount represents the maximum class
3 exposure for Plaintiffs’ meal and rest claims, wage statement claims, and includes waiting time
4 penalties. (*Id.*) Plaintiffs estimated the potential class damages/penalties based on data provided
5 by Defendant, including the number of employees in the putative class, the number of wage
6 statements at issue, the number of shifts at issue, and the hourly rates of pay applicable to the
7 putative class members. (*Id.*)

8 With respect to potential liability of Plaintiffs’ PAGA claims, Plaintiffs estimated that
9 Defendant could face civil penalties of up to a maximum \$2,971,000.00 if Plaintiffs were
10 successful at trial. This analysis “stacks” PAGA penalties, although Plaintiffs would expect a
11 more modest maximum civil penalty recovery of \$457,000 if these civil penalties were not
12 assessed at a rate of multiple violations per employee pay period. Tulyathan MPA Decl. at ¶ 15.
13 However, even assuming Plaintiffs ultimately prevail on their PAGA claims, the Court still has
14 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
15 decline to award PAGA penalties where “if, based on the facts and circumstances of the
16 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive,
17 or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
18 *Corp.* (2018) 30 Cal.App.5th 504, while the plaintiff there prevailed on his PAGA claim at trial,
19 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
20 faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found
21 such reduction to be proper. (*Id.* at p. 539.)

22 Although Plaintiffs believe in the merits of their alleged claims and maintain that there is
23 no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise defenses to
24 the claims and further with respect to the reduction of PAGA penalties and that these arguments
25 could be persuasive to the Court. Tulyathan MPA Decl. at ¶ 17. Thus, even if Plaintiffs were to
26 successfully prove their claims at trial, there is a possibility that the Court may only award a
27 small percentage of PAGA penalties, as the Court has discretion to do. The Total Settlement
28 Amount was premised with this substantial risk in mind. (*Id.*)

1 Further, Defendant raised several defenses that presented risk on the various theories of
2 liability alleged by Plaintiffs. Defendant adamantly maintained that its meal and rest period
3 policies were facially compliant and that any missed meal and rest breaks were affirmatively
4 waived by employees, such that it faced no liability on these claims. It also argued that, even if
5 Plaintiffs prevailed even partially on their meal and rest period claims, California law does not
6 authorize the recovery of waiting time penalties (available pursuant to Labor Code § 203)
7 premised on unpaid meal and rest period premium wages. Its arguments in this regard were
8 persuasive and compelling. *See* Tulyathan MPA Decl. at ¶ 18.

9 With respect to the wage statement claim, it is Defendant's position that its wage
10 statements complied with the law, and that employees did not suffer any injury as defined by
11 Labor Code § 226(e). Moreover, Defendant has indicated that it has revised its wage statement
12 practices as of May 28, 2020. With respect to Plaintiffs' claims under Labor Code § 212, it is
13 Defendant's position that it only issued 27 live paychecks among all Class members that could
14 potentially be subject to liability and their maximum value under PAGA is \$2,700. *See*
15 Tulyathan MPA Decl. at ¶ 18.

16 Thus, the Settlement for each Class Member is fair, reasonable, and adequate, given the
17 inherent risks of litigation, including the substantial risks relative to class certification and the
18 merits of the claims, the costs of pursuing such litigation, and the risks associated with the
19 Court's discretion to reduce PAGA penalties. The Settlement is the result of extensive arm's-
20 length negotiations between the Parties and their counsel and was facilitated by an experienced
21 and neutral mediator. *See generally*, Tulyathan MPA Decl.

22 Although Plaintiffs believe that the class can be certified, Plaintiffs and their counsel also
23 believe in the fairness of the settlement that is based on factoring in the uncertainty and risks to
24 Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in
25 the operative Complaint, the possibility of non-certification, and the potential for appeals.
26 Tulyathan MPA Decl. at ¶ 19. These risks on class certification are compounded by the
27 California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1.
28 There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight

1 years of litigation, but the judgment and the certification ruling were reversed by the California
2 Supreme Court after an additional five years of litigation. The case was remanded back to
3 superior court where class certification was denied and plaintiffs' subsequent appeal also was
4 denied.

5 Indeed, numerous courts have held that **gross** settlements approximating between only 8
6 and 25% of the defendant's potential exposure are fair and reasonable. (*See, e.g., In re Mego Fin.*
7 *Corp. Secs. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (holding that class action settlement
8 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
9 settlement amounting to only a fraction of the potential recovery does not per se render the
10 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
11 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
12 settlement is fair and adequate depends on the "the difficulties in proving the case");
13 *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. Mar. 20, 2015) 2015 WL 1289342, at p.*6
14 (holding that class action settlement recovering between **8.5% and 25%** of the defendant's
15 potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.* (C.D. Cal. 2014) U.S. Dist. Ct.
16 Case No. 8:12-cv-02161 (granting preliminary approval of wage and hour class settlement which
17 obtained **only 9.1%** of projected damages, given the risks of continued litigation); *Villegas v. J.P.*
18 *Morgan Chase & Co.*, (N.D. Cal. 2012) 2012 WL 5878390, at p.*6 (holding that gross class
19 action settlement of approximately 15% of the potential recovery was fair and reasonable).)

20 Here, the total maximum amount of class and PAGA penalties amount to approximately
21 \$5,831,418.56, without discounting for potentially losing on any of the causes of action.
22 Tulyathan MPA Decl. at ¶ 16. The Total Settlement Amount is \$500,000, which is
23 approximately **8.6%** of the maximum class and PAGA penalties. (*Id.*) Without stacking
24 potentially oppressive PAGA penalties, this number skyrockets to more than 15%. (*Id.*) Thus,
25 the settlement was negotiated at arms' length and the high settlement percentage-to-recovery
26 further supports that the settlement as fair and reasonable.

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1 As interpreted by the California Supreme Court, C.C.P. § 382 requires the existence of an
2 “ascertainable class” whose members share a “well-defined community of interest” in the basic
3 issues of the suit. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *Richmond v. Dart*
4 *Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Vasquez, supra*, 4 Cal.3d at 808. The “community of
5 interest” requirement embodies three factors: “(1) predominant common question of law or fact;
6 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
7 who can adequately represent the class.” *Linder*, 23 Cal.4th at 435, quoting *Richmond*, 29 Cal.3d
8 at 470. “Other relevant considerations include the probability that each class member will come
9 forward to prove his or her separate claim to part of the total recovery and whether the class
10 approach would actually serve to deter and redress alleged wrongdoing.” *Id.* Lastly, as a general
11 rule, if a defendant’s liability can be determined by facts common to the class members, a class
12 will be certified even if such members must individually prove their damages. *Employment*
13 *Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.

14 ***i. The Proposed Class is Ascertainable***

15 Plaintiffs believe the proposed Settlement Class is clearly ascertainable as it can be easily
16 identified from Defendant’s employment and payroll records. According to Defendant’s
17 records, the Settlement Class consists of 79 employees. Salinas Decl. at ¶ 6. As one individual
18 submitted an opt-out to the Settlement Administrator, the final count of participating Settlement
19 Class members is thus comprised of 78 employees. Salinas Decl. at ¶ 9; Tulyathan Decl. at ¶ 14.

20 ***ii. Numerosity is Satisfied***

21 A class will be certified when it is impracticable to join all class members in the case.
22 “Impracticability means difficulty or inconvenience of joinder; the rule does not require
23 impossibility of joinder.” *German v. Federal Home Loan Mortgage Corp.* (S.D.N.Y. 1995) 885
24 F. Supp. 537, 552. The numerosity requirement has been liberally construed, ranging from small
25 groups with just a few dozen members to vast groups of millions of members.⁵ As the

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27 ⁵ *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (42-member class “quantitatively
28 sufficient for a class action”); *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138 (class of 5
million).

1 Settlement Class is comprised of 79 employees, this is sufficiently numerous as it would be
2 “impracticable” to bring all Class Members before the Court.

3 **iii. Common Issues of Law and Fact May Predominate**

4 In determining whether sufficient common questions of law and fact predominate, for the
5 purposes of meeting the commonality criterion, the Court’s inquiry is directed towards a review
6 of “what type of questions - common or individual - are likely to arise in the action” in
7 considering “whether the theory of recovery advanced by the proponents of certification is, as an
8 analytical matter, likely to prove amenable to class treatment.” *Sav-On Drug Stores v. Superior*
9 *Court* (2004) 34 Cal.4th 319, 327. Here, the evidence shows that common issues of law or fact
10 may predominate.

11 Plaintiffs allege, and believe that discovery revealed, that Defendant applies the same
12 policies and procedures pertaining to payment of wages under a uniform payment system to all
13 members of the Settlement Class. *See Sav-On, supra*, 34 Cal. 4th at 329-331 (finding trial court
14 did not err in certifying the class where common employment practices and uniform policies were
15 at issue). The Settlement Class’ claims all stem from a common source: members of the
16 Settlement Class allege that Defendant violated the same limited Labor Code provisions in
17 connection with their employment. All members of the Settlement Class seek the same relief
18 under the same California laws related to allegedly common defective pay policies and practices.
19 Under these circumstances, the commonality requirement is satisfied for purposes of certifying
20 the Settlement Class for settlement purposes.⁶ *See Tulyathan Decl.* at ¶¶ 4-8.

21 To the extent that a few individual issues exist, Plaintiffs believe they do not predominate
22 and, therefore, would not have defeated class certification. As the California Supreme Court has
23 stated, “even if some individualized proof of such facts ultimately is required to parse class
24 members’ claims, that such will predominate in the action does not necessarily follow.” *See Sav-*
25

26 ⁶ Utilization of the class vehicle is particularly important in actions seeking injunctive relief, since
27 the risk of two or more inconsistent adjudications of such relief would likely leave the defendant
28 unable to act (or not act) in proper response to each. *See Weil & Brown, Civ. Proc. Before Trial*,
14:13.2 at 14-5.

1 On, *supra*, 34 Cal.4th at 334. Individual issues do not render class certification inappropriate so
2 long as such issues may effectively be managed. *Richmond, supra*, 29 Cal.3d at 473; *Occidental*
3 *Land v. Superior Court* (1976) 18 Cal.3d 355, 363-64; *Washington Mutual Bank, FA v. Superior*
4 *Court* (2001) 24 Cal.4th 906, 922.

5 **iv. The Proposed Class Representatives' Claims are Typical**
6 **of the Class' Claims**

7 Plaintiffs assert that their claims are typical of the Class Members' claims. The class
8 representatives' claims need not be identical to the claims of other class members and it is only
9 required that the representative be similarly situated so that he or she will have the motive to
10 litigate on behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 47. In the
11 present case, Plaintiffs allege that Defendant is liable to the Class for failure to provide complaint
12 off-duty meal periods, failure to provide compliant off-duty rest periods, failure to timely pay
13 wages upon separation of employment, and failure to provide proper paychecks and accurate
14 itemized wage statements. Like all Class Members, Plaintiffs were subjected to these same
15 policies and practices. (Declaration of Clarence Smith ("Smith Decl.") at ¶¶ 3-4; Declaration of
16 Phuoc Truong ("Truong Decl.") at ¶ 3.) In particular, Defendant did not provide off-duty meal
17 and rest breaks to Plaintiffs, and did not pay any premium compensation in lieu thereof. (Truong
18 Decl. at ¶ 3; Smith Decl. at ¶ 3.) Further, Plaintiffs did not receive accurate wage statements
19 whenever overtime wages were paid, in violation of Labor Code § 226(a). (Truong Decl. at ¶ 3;
20 Smith Decl. at ¶ 4.) In addition, Plaintiff Truong received paychecks from Defendant that were
21 drawn from Harris Bank, which does not have California locations and could not be cashed in
22 California without incurring fees. (Truong Decl. at ¶ 3.) As a result, Plaintiff Truong incurred
23 additional fees upon check cashing to access his wages. (*Id.*) In other words, Plaintiffs contend
24 that they were subjected to the same policies and practices as other Class Members and thus, the
25 typicality requirement is met.

26 Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such
27 issues been raised or presented. (Truong Decl. at ¶ 12; Smith Decl. at ¶ 6.) Plaintiffs have taken
28 all necessary steps to represent the interests of the Class, including by providing information and

documents to Plaintiffs' counsel. (Truong Decl. at ¶¶ 7-8; Smith Decl. at ¶¶ 5, 8.) For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

Finally, Plaintiffs have retained competent counsel, experienced in litigating class action claims in the employment context. Gaines Decl. at ¶¶ 2-6; Declaration of Alex P. Katofsky at ¶ 2-5.

**v. *Class Treatment is the Superior Method of Adjudicating
the Claims Asserted in this Case***

As outlined above, Plaintiffs contend that Defendant's common employment policies applicable to all Class Members are at the root of determining the merits – both factually and legally – of Class Members' claims. Accordingly, there exist significant common questions of law and fact which may be tried by the Court in one proceeding. Judicial efficiency mandates that the class action procedure be utilized to resolve these common issues.

The only alternative to certifying a case like this as a class action would be to force more than four hundred current and former employees to file individual lawsuits or arbitrations. As the Supreme Court has stated, “[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiffs’ claim in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquiries and the absence of any remedial proceeding whatsoever.” *Sav-On, supra*, 34 Cal.4th at 339, fn. 10.

Finally, Plaintiffs contend that California courts favor class certification in wage and hour cases. The California Supreme Court has expressly endorsed the use of the class action procedure in cases examining the legality of a uniform exemption of an entire category of employees from California's overtime laws. In *Sav-On*, the Court reasoned that, because there exists a “clear public policy ... that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers” (34 Cal.4th at 340), the class action device should be used to enforce these laws wherever this device “would be the most efficient way of adjudicating the class members’ overtime claims.” 34 Cal.4th at 330. Continuing this trend, in *Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328, the appellate court

1 noted, “wage and hour disputes (and others in the same general class) routinely proceed as class
2 actions.”

3 Although Class Counsel believe the Class Members’ claims are meritorious, that the Class
4 may have been certified, and that substantial damages could have been proven at trial, they are
5 experienced counsel who understand that liability, class certification, and damage issues — and
6 the outcome of any appeals that would likely follow if the Class were successful at trial —
7 present substantial risks for Class Members. Those risks must be considered in assessing the
8 fairness of this Settlement, which guarantees a substantial recovery for Class Members and
9 eliminates the risk that Class Members would be left without any recovery. Because the
10 Settlement provides immediate and substantial relief without requiring the Class Members either
11 to undergo the risks of losing at trial or to pay additional attorneys’ fees and costs to continue to
12 prosecute this action, it warrants this Court’s approval.

13 **d. Disclosure of Documents and Data Demonstrating the**
14 **Strengths and Weaknesses of this Action Was**
15 **Completed Prior to Entering into the Settlement**

16 The extent of discovery that has been completed and the stage of the litigation are factors
17 that courts consider in determining the fairness of a settlement. *See Dunk, supra*, 48 Cal.App.4th
18 at 1801. Class Counsel conducted a thorough investigation into the claims alleged in the
19 operative complaint prior to commencing (and following the commencement of) settlement
20 discussions. Informal discovery took place between the Parties in which Defendant and Plaintiffs
21 exchanged information and documentation and further apprised each other of their respective
22 factual contentions, legal theories, and defenses. *See Tulyathan Decl.* at ¶¶ 9, 15-16. Thereafter,
23 the Parties negotiated the proposed Settlement with knowledge of the strengths and weaknesses
24 of this case and the amounts necessary to compensate Class Members for their estimated
25 damages.

26 **e. The Complexity, Expense, and Likely Duration of**
27 **Continued Litigation Militate in Favor of Final**
28 **Approval**

A fourth factor considered by courts in determining whether a settlement warrants final

1 approval is the complexity, expense, and likely duration of the litigation in the absence of
2 settlement. *See Dunk, supra*, 48 Cal.App.4th at 1801; *Officers for Justice v. Civil Service Com'n*
3 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. In applying this factor, a
4 court should weigh the benefits of the settlement against the expense and delay involved in
5 achieving an equivalent or more favorable result at trial. *See Young v. Katz* (5th Cir. 1971) 447
6 F.2d 431, 433.

7 Employment class action cases are expensive and time-consuming to prosecute.
8 Continued litigation of this action against Defendant, represented by respected and experienced
9 law firms, would likely be complex and expensive due to the nature of the claims. It is Class
10 Counsel's opinion that, without settlement, this litigation could endure for at least three more
11 years. Gaines Decl. at ¶ 18. Further, the Settlement avoids the need for a contested class
12 certification motion that would be time consuming and costly for Plaintiffs to file, Defendant to
13 oppose, and the Court to decide. In addition, if the Court were to deny such a motion for class
14 certification, Class Members would be left without a group remedy for their claims. The issues
15 presented here would need to be litigated individually in Superior Courts or arbitration tribunals
16 in a piecemeal, costly, and time-consuming fashion. The Settlement also avoids a lengthy trial or
17 trials that likely would have involved testimony by numerous witnesses and experts.

18 The areas of law at issue in this case are novel, dynamic, and change frequently. Gaines
19 Decl. at ¶ 19. Extended litigation equates to substantial risk for class members, many of whose
20 individual claims do not have substantial value from the onset. *Id.*

21 f. **The Experience and Views of Counsel Favor Final**
22 **Approval**

23 Class Counsel support the Settlement as fair, adequate, reasonable, and in the best
24 interests of the Class as a whole. The endorsement of qualified and well-informed counsel of the
25 settlement as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802; *Ellis*
26 *v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18. Class Counsel have many
27 decades of collective litigation experience, much of which has been devoted to wage and hour
28 cases in the class action context.

Furthermore, Class Counsel is particularly well-suited to gauge the value of the class members' claims here. Class Counsel have litigated many wage and hour class actions addressing the issues presented in this lawsuit, including pay violations, meal and rest period violations, and PAGA claims. Class Counsel's experience provides a strong basis for their conclusion that the settlement terms here are fair and reasonable. Gaines Decl. at ¶¶ 6-7; Lee Decl. at ¶¶ 3-4; Tulyathan Decl. at ¶¶ 19-23.

g. **Class Members' Positive Reaction to the Settlement
Favors Final Approval**

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. Of great importance is the fact that only one (1) Class Member has opted-out from the Settlement and no Class Members voiced any opposition to the Settlement's terms. Salinas Decl. at ¶¶ 8-9. Such a positive reaction of the Class Members affected by the Settlement supports its approval. A court may properly infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. *See Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394 ("settlement is not to be deemed unfair or unreasonable simply because a large number of class members oppose it"). In this action, the Court should construe the overwhelming non-opposition to the Settlement as a strong indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

C. Court Approval of the PAGA Penalty Portion of the Settlement

Pursuant to Labor Code Section 2699(l), the Superior Court shall review and approve the settlement of penalties sought under that Labor Code Section. *Labor Code* § 2699(l). For all of the reasons stated above, the Settlement is fair, reasonable and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay \$80,000 to settle the claims of the Settlement Class brought pursuant to PAGA, of which the substantial payment of \$60,000 will be paid to the LDWA for education and enforcement purposes. This portion of the Settlement

1 should be approved. The LWDA was timely provided with a copy of the Settlement as required
2 by PAGA and has not objected to or otherwise commented on it. Tulyathan Decl. at ¶¶ 28-29;
3 Exhibit E.

4 **IV. CONCLUSION**

5 For all of the foregoing reasons, Plaintiffs request that the Court grant final approval of
6 this Settlement and approve distribution of the settlement funds to the State of California and the
7 Settlement Class members as set forth in the Stipulation.

8 Dated: May 4, 2022

Respectfully Submitted,

9 DIVERSITY LAW GROUP, P.C.

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11 By: 
12 _____
13 Larry W. Lee, Esq.
14 Mai Tulyathan, Esq.
15 Attorneys for Plaintiffs
16 and Proposed Class Counsel
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